

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

www.montgomerycountymd.gov/content/council/boa/board.asp

**Case No. S-2471
Case No. A-5641**

PETITION OF KIDS N CARE LEARNING CENTER, LLC

OPINION OF THE BOARD
(Resolution Adopted February 4, 2004)
(Effective Date of Opinion: March 4, 2004)

Case No. S-2471, Petition of Kids 'N Care Learning Center, LLC is an application for a special exception pursuant to Section 59-G-2.13.1 (Child Day Care Facility) of the Zoning Ordinance to permit the construction and operation of a two-story child day care center for a maximum of 50 children between the ages of infant and 12 years. Pursuant to the provisions of Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing and submit a Report and Recommendation. The Hearing Examiner convened a public hearing on February 19, 2002, with additional hearing dates on May 21, August 6-7, August 19, September 19, September 25, November 15, and December 9, 2002; and on January 13, February 6, May 2, May 8 and June 4, 2003. The Hearing Examiner closed the record on July 21, 2003, and on January 23, 2004, issued a Report and Recommendation for denial of the special exception.

Decision of the Board: Special Exception **Denied**.

The subject property is Lot 4, Block A, Mateney Subdivision, located at 19002 Mateney Hill Road, Germantown, Maryland, in the R-200 Zone.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation, together with a request for oral argument on the Report and Recommendation from Stephen J. Orens, Esquire, at its Worksession on February 4, 2004. The Board finds the Hearing Examiner's Report thorough and exhaustive its analysis of the evidence presented and of the issues in the case. After careful consideration and review of the record, the Board adopts the Hearing Examiner's Report and Recommendation. In so doing, the Board

particularly notes the Hearing Examiner's findings of factual inadequacies in the petitioner's case especially pertaining to a specified total enrollment, the number of children who would come to the center on a given day, the number of employee shifts, frequency and timing of trash pick-ups, how school-age children would travel to and from school, and the ability of a staff of six to take care of functions outside the classroom while maintaining required staff/child ratios in the classroom. Therefore, on a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Stephen J. Orens's request for oral argument on the Hearing Examiner's Report and Recommendation in Case No. S-2471, Petition of Kids N Care Learning Center, is **denied**; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Board adopts the Hearing Examiner's Report and Recommendation in Case No. S-2471, Petition of Kids N Care Learning Center; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that Case No. S-2471, Petition of Kids N Care Learning Center is **denied**.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 4th day of March, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.